

Item No.	Schedule of Supplies & Services	Quantity	Unit	Unit Price	Amount
	Maintenance and Repair of Instruments Compressed Air System (Hartha Thermal Power Plant)				
0001	The performance required under this contract is included within the Scope of Work as described below and encompasses all necessary equipment, labor, materials and services to maintain and repair Hartha Thermal Power Plant Instrument Compressed Air System.	1	Man days		
0002	Material	1	Lot		

SPECIAL INSTRUCTIONS FOR OFFERORS

This procurement is designated as an **Iraqi Business Set-Aside**. This procurement is reserved exclusively for award to an Iraqi business. Only Iraqi owned businesses may participate in this solicitation.

Note: Solicitation Terms and Conditions, Paragraph 1.d. below. Offers shall contain technical information, e.g. documentation, drawings, cut sheets, catalog information, etc in sufficient detail to evaluate compliance with the requirements in the solicitation.

Submit all offers under this solicitation in \$ US Dollars. The CPA reserves the right to remove from competition any offer not provided in \$US Dollars.

Potential bidders are strongly encouraged to perform a pre-bid site visit/walk-down at Hartha Thermal Power Plant to assess the current installation to allow the preparation of a realistic and accurate proposal. Pre-bid walk-down schedule will be coordinated by the Contracting Officer's on site Hartha plant POC/COR. Offerors must contact the Hartha plant POC/COR to gain access to the job site prior to the scheduled Pre-Bid walk-down. The Pre-bid walk-down is scheduled for 2 June 2004 and shall begin @ 1000 local Iraqi time and continue until the plant has been fully assessed by all potential offerors. Offerors shall check in with the Hartha plant POC/COR at least 30 minutes before scheduled plant walk-down. **The plant POC/COR is Mr. R. Zarbo and he can be contacted at 1 (312) 869-2421 ext. 1204, Kuwaiti cell: + 964 - 780-101-8550, or razarbo@bechtel.com . Alternate is Rafat Matti +964-780-101-8551 or rsmatti@bechtel.com .** All cost for transportation, lodging, food, etc. associated with the pre-bid site visit/walk-down shall be the responsibility of the potential offerors.

BACKGROUND

1.1 Instrument Compressed Air System

Compressed air widely used in Hartha Thermal Power Plant to operate control instruments and for servicing purposes. Moisture in compressed air can lead to scaling, rust, frozen lines, wear, and malfunctioning controls and air logic devices. The compressed air system for instruments must supply oil-free, water/moisture free compressed air, in order to have all instruments and instrument piping functioning properly. In doing so, the system contributes to the overall safe operation and availability of the plant.

1.2 ORIGINAL Design of Compressed Air Systems

Mitsubishi's original design of compressed air systems at Hartha Thermal Power Plant (Which consisted of four units originally) had the following main components:

1.2.1 Instrument Air System

- Four ISHIKAWAJIMA-HARIMA Heavy Industries Company class **WN-112SF** model **B** Instrument Air Reciprocating Compressors (340 CFM each) **per Unit**.
- Two DAIDO Steel Co. model **AIR-150-SP** (212 CFM each) instrument air dryers / Two instrument air reservoir tanks (Capacity 6.28 m³ each) / Two air separators **per Unit**.

1.2.2 House Service Air System

- Two House Service Air Compressors (950 CFM each) **per Unit**.
- Two house service reservoir tanks **per Unit**.

1.2.3 Control System

- Two Compressor Control Panels / Two Dryer Control Panels.
- Compressed air from all units is cross-connected to form a pipe network through manually-operated valves, in order to operate the plant from a single output in case of emergencies.

1.3 CURRENT Installation of Compressed Air System

The **CURRENT** installation of compressed air systems at Hartha Thermal Power Plant (Only Unit #1 and Unit #4 are operational) includes the following main components:

1.3.1 Instrument Air System

- Two Atlas Copco model **ZR-132** (649 CFM each, 10 bar maximum working pressure) water-cooled Instrument Air Compressors **per Unit**.
- Two Daido Steel Co. model **AIR-150-SP** (212 CFM each) instrument air dryers / Two instrument air reservoir tanks (Capacity 6.28 m³ each) / Two air separators **per Unit**.

1.3.2 House Service Air System

- One Atlas Copco model **ZR-160** (818 CFM each, 10 bar maximum working pressure) water-cooled Service Air Compressor **per Unit**.
- Two service air reservoir tanks **per Unit**.

1.3.3 Control System

- Two Compressor Control Panels / Two Dryer Control Panels.

SCOPE OF WORK

The scope of work is described below and encompasses all necessary equipments, materials and services to maintain and repair Hartha Thermal Power Plant **Instrument Compressed Air System**.

Hartha Thermal Power Plant is located 20 kilometers North of Basrah City, IRAQ, which was constructed during the late 1970's by Mitsubishi Heavy Industries. Plant has four 200 MW units with only two units (Unit #1 and Unit #4) functional. Due to aging of plant's instruments, compressors, valves and pipes, and replacement of original instrument air compressors with new Atlas Copco compressors, it was determined that instruments compressed air contains unacceptable percentage of moisture/water content, which effectively reduces instruments reliability, age and availability of units.

2.1 Requirements

- 2.1.1 Contractor shall be an **authorized, licensed** Atlas Copco Company representative.
- 2.1.2 Potential bidders are strongly encouraged to perform a pre-bid site visit/walk-down at Hartha Thermal Power Plant to assess the current installation to allow the preparation of a realistic and accurate proposal. Pre-bid walk-down schedule will be coordinated by the Contracting Officer's on site Hartha plant POC/COR. Offerors must contact the Hartha plant POC/COR to gain access to the job site prior to the scheduled Pre-Bid walk-down. The Pre-bid walk-down is scheduled for 2 June 2004 and shall begin @ 1000 local Iraqi time and continue until the plant has been fully assessed by all potential offerors. Offerors shall check in with the Hartha plant POC/COR at least 30 minutes before scheduled plant walk-down. **The plant POC/COR is Mr. R. Zarbo and he can be contacted at 1 (312) 869-2421 ext. 1204, Kuwaiti cell: + 964 - 780-101-8550, or razarbo@bechtel.com. Alternate is Rafat Matti +964-780-101-8551 or rsmatti@bechtel.com.** All cost for transportation, lodging, food, ect. associated with the pre-bid site visit/walk-down shall be the responsibility of the potential offerors.
- 2.1.3 Contractor shall **service (4) Four** (two per Unit) existing Atlas Copco model **ZR-132** water-cooled instrument air compressors (649 CFM each, 10 bar maximum working pressure), supply, calibrate, program, and replace malfunctioning parts in these air compressors (see Attachment -1-).
- 2.1.4 Contractor shall **supply, install, and commission** the following accessories for all existing Atlas Copco model **ZR-132** water-cooled instrument air compressors:
 - Automatic water shut-off valves.
 - Heavy-duty inlet filters.
 - Atlas Copco model **WSD-750** Water Separator after each compressor air outlet (see Attachment -2-).
- 2.1.5 Contractor shall **provide** serviceable spare-parts for **(3) three** years of operation for these air-compressors (specify in bid, quantity offered). Include any Atlas Copco specific oils, sensors, electronic control cards, quick wear items, ...etc.
- 2.1.6 Contractor shall **supply, install, and commission** Atlas Copco model **ES Millennium ES3000-X** integrated control and monitoring system (see Attachment -3-) with the necessary accessories and software to remotely monitor and control all instrument air compressors. The monitoring / control should be done using a Personal Computer(s) (supplied with the accessories) installed at the main control room for Unit #1 and Unit #4 at Hartha Thermal Power Plant (Turbine Deck), along with Laser Printer(s). **ES Millennium Software** to control and monitor these compressors should be installed, programmed, and tested properly at every personal computer installed.
- 2.1.7 Contractor shall **provide technical training** for plant Controls Department Personnel on using and programming the **ES Millennium Software** to control and monitor instrument air compressors.
- 2.1.8 Contractor shall **supply and install** all the necessary pre-approved Manual Drain Valves, Drain Traps, and Automatic Drain Valves to replace the malfunctioned valves. Provide a minimum of **(6) Six** per Unit and unit price for additional electronic drains. Additional drain valves may be identified and shall be pre-approved by the CPA Contract Officer prior to supply and installation.
- 2.1.9 Contractor shall **supply, install, and commission (4) Four** new Atlas Copco model **BD-260** heat reactivated absorption dryers (551 CFM each, see Attachment -4-) to replace the existing malfunctioning dryers. The new dryers must be supplied complete with full options and with serviceable spare-parts / desiccant for **(3) three** years of operation.

- 2.1.10 Contractor shall **supply, install, and commission** the following accessories for all newly supplied Atlas Copco model **BD-260** heat reactivated adsorption dryers:
- Dew point control including indication.
 - Pressure dew point **-70°C** (Minus Seventy) option.
 - Insulation of drying towers.
 - Minimum pressure valve control at dryer outlet.
- 2.1.11 Contractor shall **supply, install, and commission** Atlas Copco model **PD-260** High efficiency coalescing and particulate filters (see Attachment -5-) before and after each dryer (Total of **(8) Eight** filters are required). Filters must be supplied with full standard options of :
- Voltage-Free Contacts
 - Serial Connection Kits
 - Wall Mounting Kits
 - Quick Couplings
 - Electronic Water Drains
 - Differential Pressure Gauges.
- 2.1.12 Contractor shall **clean, refurbish, and coat internals surfaces of (4) Four existing** instrument air reservoir tanks (Capacity 6.28 m³ each) and have all drain valves replaced with Atlas Copco model **EWD-330C** electronic condensate drains (see Attachment -6-). Coating shall be compatible with compressed air service.
- 2.1.1 Contractor shall **provide technical training** to all Hartha Power Plant Operators on operation and servicing of Atlas Copco air compressors and dryers.
- 2.1.2 All parts for air-compressors shall be genuine Atlas Copco parts.
- 2.1.3 Contractor shall **remove** old equipment and dispose of residue properly.
- 2.1.4 Contractor shall be **responsible for civil site work** as required to support installation of new equipment.
- 2.1.5 After award and prior to installation, the Contractor shall **submit** the proposed layout of Hartha Thermal Power Plant to the contracting officer for approval of new equipments.

2.2 SECURITY

Contractor shall provide all security services necessary to protect Contractor employees and equipment on site.

2.3 UNEXPLODED ORDNANCE

The power plant property is considered cleared, however, should previously undetected unexploded ordnance be detected, Contractor shall report the discovery to the COR immediately, flag and stop all works in the area immediately, and wait until UXO's properly disposed.

2.4 COORDINATION AND INTERFACE WITH OTHERS

- 2.4.1 Contractor shall be responsible for coordinating its employees in an orderly fashion for implementation of work described herein.
- 2.4.2 Contractor shall provide such information necessary to establish the progress of the work and document expenditures for completion of the effort. Weekly status reports and updated schedule shall be submitted to the contracting officer or his on-site representative for approval, as directed by the contracting officer after award.

3. SPECIFICATIONS

The Contractor shall supply and submit the specifications for all equipments and materials proposed for the instrument compressed air system to the contracting officer with the bid.

4. CODES, AND STANDARDS

The requirements of this contract are based on conformance with all relevant ANSI, IEEE, ASTM, ASME, NFPA, AISE, ASCE, JIS, DIN and other applicable standards and all local regulations in effect. These relevant standards shall be identified by the Contractor as determined in the implementation.

5. SPECIFICATIONS, DRAWINGS AND DOCUMENT REQUIREMENTS

5.1 SUBMITTALS (Contractor required to submit the following:)

- 5.1.1 Technical Training Plan: Contractor required specifying detailed plan with the bid for Number of Trainees, Period of Training, Course Outlines involved ...etc.
- 5.1.2 DOCUMENTS
- Evaluation, Calibration and Recommendations for the existing field instruments.
 - Determination of any additional requirements for correct dry and safe operation of plant instrument air system.

- 5.1.3 Contractor shall supply Three (3) Complete Sets of Hard Copies and (1) One Electronic Copy (on a Compact Disk) of Documentation and Technical Drawings related to the compressed air system and supplied equipment

IDENTIFICATION OF CORRESPONDENCE: All correspondence and data submitted by the contractor under this Solicitation shall reference the Solicitation number.

Packaging – Marking

Packing/Marking Instructions:

1. All shipments **shall** be marked “Iraq Reconstruction Program” and “Shipment in transit for Humanitarian Purposes”
2. The contract no. DABV01-04-M-_____ shall be clearly and visibly printed on each package, bundle, pallet, and container.

Customs Levy Exemption. The contractor shall prepare the Reconstruction Levy Exemption Form at the Logistics Tab on www.Rebuilding-Iraq.net for any shipments of materiel or equipment imported into Iraq in performance of this Task Order. The completed form must accompany each shipment into Iraq and a copy emailed to pmo-sloc@baghdadforum.com

Delivery

Mobilization Deployment & Commencement of Operations: the offeror shall enter the number of days following the date of contract that it will mobilize, deploy, and commence operations at the plant: _____.

Period of Performance: the contractor shall enter its proposed period of performance (number of days) herefollowing: _____

Contract Administration

Payment:

Payment will be by an irrevocable Letter of Credit. The Contractor may submit an invoice against the Letter of Credit in accordance with the Contract terms.

The balance due (\$ USD) will be paid by average monthly payments plus actual material costs expended that month via Letter of Credit to the Vendor's Advising Bank NET 30 Days upon COR concurrence on the monthly invoice.

Initial LC costs and those costs attributed to the contract modifications generated by the government entity will be paid by the government entity. Costs attributable to Contractor requests are the responsibility of the Contractor. Partial deliveries and partial payments are authorized.

The Letter of Credit will be made out to the benefit of _____ for a period of (x = period of performance plus 30-60 days) months after the date of contract award, as follows:

Bank Name:

Name

Address

SWFT code

POC

Telephone

email

Company:

Name

Address

POC

Tel

Fax

Email

**CONTRACT AND GRANT PROCEDURES
APPLICABLE TO VESTED AND SEIZED IRAQI PROPERTY AND
DEVELOPMENT FUND FOR IRAQ**

**Standard Terms and Conditions for Solicitations and Contracts in Excess of \$5,000
Solicitation Terms and Conditions**

1. Submission of Offers. The contractor will submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in the solicitation. Offers may be submitted on letterhead stationery or as otherwise specified in the solicitation. At a minimum, offers must show:

- a. The solicitation number.
- b. The time specified in the solicitation for receipt of offers.
- c. The name, address, and telephone number of the offeror.
- d. A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary.
- e. Terms of any express warranty.
- f. Price and any discount terms.
- g. Payment address (if different from mailing address)
- h. Acknowledgment of solicitation amendments (if any)
- i. Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers, and other relevant information)
- j. A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

2. Period for Acceptance of Offers. The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

3. Product Samples. When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense, and returned at the sender's request and expense, unless they are destroyed by preaward testing.

4. Multiple Offers. Offerors are encouraged to submit multiple offers presenting alternative terms and conditions or items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

5. Late Submissions, Modifications, Revisions, and Withdrawals of Offers.

a. Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Contracting Officer designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 1630 hours, local time, for the designated contracting office on the date that offers or revisions are due.

b. Any offer, modification, revision, or withdrawal of an offer received at the contracting office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition, and

1) if it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the contracting office not later than 1700 hours one working day prior to the date specified for receipt of offers, or

2) there is acceptable evidence to establish it was received at the location designated for the receipt of offers and was under government control prior to the time set for receipt of offers, or

3) if the solicitation was a request for proposals, it was the only proposal received.

c. However, a late modification of an otherwise successful offer that makes the offer's terms more favorable to the contracting organization issuing the solicitation will be considered at any time it is received and may be accepted.

d. Acceptable evidence to establish the time of receipt at the contracting office includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of contracting office personnel.

e. If an emergency or unanticipated event interrupts normal processes so that offers cannot be received at the contracting office designated for receipt of offers by the exact time specified in the solicitation, and urgent requirements preclude amendment of the solicitation or other notice of the extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal processes resume.

f. Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers. An offer may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is

established and the person signs a receipt for the offer.

6. **Contract Award.** The Contracting Officer intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. However, the Contracting Officer reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Contracting Officer may reject any or all offers if such action is in the public interest; accept other than the lowest-priced offer; and waive informalities and minor irregularities in offers received.

7. **Multiple Awards.** The Contracting Officer may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the schedule, offers may not be submitted for quantities less than those specified. The Contracting Officer reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

8. **Evaluation.** The Contracting Officer will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the contracting activity, price and other factors considered. The following factors shall be used to evaluate offers.

9. **Options.** The Contracting Officer will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Contracting Officer may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Contracting Officer to exercise the option(s).

10. **Notice of Award.** A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance of the offer, shall result in a binding contract without further action by either party. Before the offer's scheduled expiration time, the Contracting Officer may accept an offer (or part of an offer) whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

11. **Protests.** A contractor wishing to object to the terms of a solicitation, the termination of a solicitation, the award of a contract, or the termination of the award of a contract, shall present the matter to the Contracting Officer for an initial decision. The contractor shall state to the Contracting Officer the basis for the protest. If the contractor does not agree with the Contracting Officer's initial decision, the Contractor may appeal the initial decision to the Head of Contracting Activity, CPA, for resolution. The decision of the Head of Contracting Activity, CPA, shall be the final decision in the matter.

12. Reserved

Contract Terms and Conditions

13. **Inspection/Acceptance.** The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Contracting Officer reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Contracting Officer may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Contracting Officer must exercise the post-acceptance rights:

- a. Within a reasonable time after the defect was discovered or should have been discovered, and
- b. Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

14. **Assignment.** The Contractor shall not assign, transfer, or make any other disposition of this Contract, or any part thereof, without the prior written consent of the Contracting Officer.

15. **Changes.** Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

16. **Disputes.** This contract is not subject to the Contract Disputes Act of 1978, as amended (41 U.S. Code, Sections 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal, or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the United States Federal Acquisition Regulation Clause 52.233-1, Disputes, which is incorporated herein by reference except that appeals from final decisions of a Contracting Officer may only be appealed to the U.S. Armed Services Board of Contract Appeals (ASBCA). The decision of the ASBCA shall be final. The contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

17. **Excusable Delays.** The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Governmental activity in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

18. **Invoice.** The Contractor shall submit an original invoice and three copies (or electronic invoice if authorized) to the address designated in the contract to receive invoices. The invoice must include:

- a. Name and address of the Contractor.
- b. Invoice date and number.

- c. Contract number, contract line item number, and, if applicable, the order number.
- d. Description, quantity, unit of measure, unit price, and extended price of the items delivered.
- e. Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on a bill of lading.
- f. Terms of any discount for prompt payment offered.
- g. Name, title, and phone number of person to notify in event of defective notice.

19. **Patent Indemnity.** The Contractor shall indemnify the Government agency involved in this contract and its officers, employees, and agents against liability, including costs, for actual or alleged direct or indirect contributory infringement of, or inducement to infringe, any patent, trademark, or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

20. **Payment.** Payment shall be made for items accepted by the Contracting Officer that have been delivered to the delivery destinations set forth in this contract. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronics fund transfer payment is made.

21. **Risk of Loss.** Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pay to the Contracting Officer upon:

- a. Delivery of the supplies to a carrier, if transportation is f.o.b. origin.
- b. Delivery of the supplies to the Contracting Officer or a representative at a destination specified in the contract, if transportation is f.o.b. destination.

22. **Taxes.** The contract price includes all applicable taxes and duties.

23. **Termination for Convenience.** The Contracting Officer reserves the right to terminate this contract, or any part hereof, for the sole convenience of the Government activity. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Contracting Officer using its standard record keeping system, have resulted from the termination. The Contracting Officer, upon reasonable advanced notice, may inspect the financial records relating to this Contract including the amounts paid to subcontractors and the locations where any portion of the Contractor's performance occurs. The Contracting Officer may review the Contractor's financial statements upon request.

24. **Termination for Cause.** The Contracting Officer may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Contracting Officer, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government agency shall not be liable to the Contractor for any amount of supplies or services not accepted, and the Contractor shall be liable for any and all rights and remedies provided by law. If it is determined that the Contracting Officer improperly terminated this contract for cause, such termination shall be deemed a termination for convenience.

25. **Title.** Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government agency upon acceptance, regardless of when or where the Government agency takes physical possession.

26. **Warranty.** The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

27. **Immunities.** Except as provided in this contract, the Government of Iraq or its agents, including the CPA or other governmental agencies, have not waived any of their privileges or immunities.

28. **Legal Status.** The Contractor is an independent contractor. The Contractor's employees will not be considered government employees for any purpose. The Contractor is solely responsible for compensation agreements with employees.

29. **Contractor's Responsibility for Employees.** The Contractor is responsible for the professional and technical competence of its employees and will select reliable individuals who will perform effectively in the implementation of this Contract, respect the local customs, and conform to a high standard of moral and ethical conduct. The Contracting Officer may require that the Contractor remove from the job employees who endanger persons or property, or whose continued employment under this contract is inconsistent with the interest of military security.

30. **Subcontracting.** Except as authorized in this contract, the Contractor may not subcontract any portion of the performance of this Contract to another without the prior written consent of the Contracting Officer. The terms of any subcontract will be subject to and conform with the provisions of this Contract.

31. **Indemnification.** The Contractor shall defend, indemnify, and hold harmless all government entities involved in this contract, together with the entities' officers, agents, and employees from and against all suits, claims, or liabilities of any kind

arising out of acts or omissions of the Contractor, its employees, or the Contractor's subcontractors.

32. Insurance. The Contractor represents and warrants that it shall maintain appropriate insurance including general commercial liability and workers compensation coverage in an adequate amount to cover third parties claims arising from or in connection with this Contract. Upon request, the Contractor will provide satisfactory evidence of the insurance required under this article.

33. Use of Names and Symbols. Except as required by this Contract, the Contractor will not advertise or otherwise makes public the fact that it is a contractor to the governmental entity in this Contract, nor will the Contractor use the name or emblem of the governmental entity for commercial purposes.

34. Limitation of Liability. Except as otherwise provided by an express warranty, the Contractor will not be liable to the governmental entity for consequential damages resulting from any defect or deficiencies in accepted items.

35. Inconsistency between English Version and Translation of Contract. In the event of inconsistency between any terms of this contract and any transaction into another language, the English language meaning shall control.

36. Correspondence in English. The Contractor shall ensure that all contract correspondence that is addressed to the governmental entity awarding this contract is submitted in English or with an English translation.

37. Conflicts of Interest. The Contractor warrants that no governmental official has received or will be offered by the Contractor any direct or indirect benefit in connection with or arising from the award of this contract. The Contractor agrees that any breach of this provision is a breach of an essential term of this Contract.

38. Order of Precedence (except for Construction Contracts). Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- a. The schedule of supplies/services.
- b. The Assignments, Disputes, Payments, Invoice, Other Compliances clauses of this contract.
- c. Addenda to this solicitation or contract, including any license agreements for computer software.
- d. Solicitation provisions (if this is a solicitation)
- e. The other standard clauses in this contract.
- f. Other documents, exhibits, and attachments.
- g. The specification (the narrative description of the work)

39. Other Compliances. The Contractor shall comply with all applicable laws, rules, and regulations applicable to its performance under this contract.

40. Source of Funds. The obligation under this contract is made with Iraqi Funds, as defined in CPA Memorandum Number 4, dated 19 August 2003. No funds, appropriated or other, of any Coalition country are or will be obligated under this contract.

41. Option to Extend the Term of the Contract.

a. The governmental entity awarding this contract may extend the term of this contract by written notice to the Contractor within _____ days (insert number of days) prior to the end of the term of the contract, or the end of any option period previously exercised under the contract; provided that the Government entity gives the Contractor a preliminary written notice of its intent to extend at least _____ (insert number of days) before the contract period (including option periods exercised) expires. The preliminary notice does not commit the governmental entity to an extension. If the Government exercises this option, the extended contract shall be considered to include this clause.

b. At the end of the contract period, or at the end of the final option period under this contract, whichever is later, if the governmental entity requires continued performance of services within the limits and at the rates specified in the contract, the governmental entity may extend the period of performance under this contract for an additional period not to exceed six months, by giving written notice to the Contractor at least _____ days before the end of the contract period or the end of the final option period exercised, whichever is later.

42. Liquidated Damages.

a. If the Contractor fails to perform within the time specified in this contract, the Contractor shall, in place of actual damages, pay to the governmental entity liquidated damages of \$ _____ per calendar day of delay.

b. If the governmental entity terminates this contract in whole or in part under the Termination for Cause clause, the Contractor is liable for liquidated damages accruing until the governmental entity reasonably obtains similar delivery or performance. These liquidated damages are in addition to excess costs of repurchase under the Termination for Cause clause.

c. The Contractor will not be charged with liquidated damages when the delay in delivery or performance is beyond the control and without the fault or negligence of the Contractor as defined in the Excusable Delay clause.

43-54 Reserved.

55. Alternate Disputes Resolution. The parties to this contract agree that swift, inexpensive and amicable resolution of

disagreements is in our mutual interest. The parties further agree that Alternative Dispute Resolution (ADR) can contribute significantly to the shared goal of resolving disagreements swiftly and efficiently. Therefore, the parties agree to the non-binding use of ADR in an effort to seek final disposition of disagreements within the time periods set forth below. These time periods are guidelines only and may be altered to fit particular controversies.

<u>Amount in Controversy</u>	<u>Suggested Resolution Period After Receipt of Written Notice</u>
\$250,000 or less	Not to exceed 60 days
\$250,001-\$1M	Not to exceed 90 days
Over \$1M	Not to exceed 180 days

The parties agree that any of the following ADR methods may be used at any time during contract performance; mediation, early neutral evaluation, mini-trial, Executive Dispute Resolution Committee consisting of principals of the owner and the builder, Dispute Resolution Board made up of impartial third parties (each party shall select one member and the third shall be selected by the two designated members), and any other non-binding procedure. The parties further agree that the use of ADR is entirely voluntary and nothing in this provision shall affect the rights of either party under the clause entitled "disputes," FAR 52.233-1.

56. De-Baathification of Iraqi Society.

- (a) The contractor shall not employ or subcontract with any persons determined under procedures promulgated by the Iraqi Governing Council to be full members of the Baath Party or affiliated with the organizations set forth at section 2(2) of CPA Memorandum No. 7, Delegation of Authority Under De-Ba'athification Order No. 1, dated November 4, 2003 and therefore prohibited from continued or future employment (hereafter referred to as "prohibited person"). Contractors shall coordinate with the Ministry of Justice to determine whether particular individuals are "prohibited persons".
- (b) If during contract performance, a person employed by the contractor or subcontractor is determined to be a prohibited person under procedures promulgated by the Iraqi Governing Council, the contractor shall, as appropriate:
 - (1) Terminate the employment of the prohibited person.
 - (2) Terminate the subcontract with the prohibited person as soon as possible consistent with satisfying contract requirements.
- (c) The contractor shall not display the image or likeness of Saddam Hussein or other readily identifiable members of the former regime or symbols of the Baath Party or the former regime in government buildings or public spaces.
- (d) Flowdown. The contractor shall include a comparable clause in all subcontracts and require all subcontractors to flow down the clause.
- (e) The Coalition Provisional Authority Order Number 1, dated 16 May 2003, subject: De-Ba'athification of Iraqi Society and the corresponding implementation plan and delegations of authority can be found at <http://cpa-iraq.org>